

5515.8. The Commander USARCS is responsible for maintaining direct liaison with sending State representatives and establishing procedures designed to carry out the provisions of this subpart.

§ 536.106 Definitions for international agreements claims.

(a) *Force and civilian component of force.* Members of the sending State's armed forces on temporary or permanent official duty within the receiving State, civilian employees of the sending State's armed forces, and those individuals acting in an official capacity for the sending State's armed forces. However, under provisions of the applicable SOFAs the sending State and the receiving State may agree to exclude from the definition of "force" certain individuals, units or formations that would otherwise be covered by the SOFA. Where such an exclusion has been created, this subpart will not apply to claims arising from actions or omission by those individuals, units or formations. "Force and civilian component of force" also includes claims arising out of acts or omissions made by military or civilian personnel, regardless of nationality, who are assigned or attached to, or employed by, an international headquarters established under the provisions of the Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty, dated August 28, 1952, such as Supreme Allied Command, Atlantic.

(b) *Types of claims under agreements—*

(1) *Intergovernmental claims.* Claims of one contracting party against any other contracting party for damage to property owned by its armed services, or for injury or death suffered by a member of the armed services engaged in the performance of official duties, are waived. Claims above a minimal amount for damage to property owned by a governmental entity other than the armed services may be asserted. NATO SOFA, Article VIII, paragraph 1–4; Singapore SOFA, Article XVI, paragraph 2–3.

(2) *Third-party scope claims.* Claims arising out of any acts or omissions of members of a force or the civilian component of a sending State done in the

performance of official duty or any other act, omission, or occurrence for which the sending State is legally responsible shall be filed, considered and settled in accordance with the laws and regulations of the receiving State with respect to claims arising from the activities of its own armed service; see, for example, NATO SOFA, Article VIII, paragraph 5.

(3) *Ex gratia claims.* Claims arising out of tortious acts or omissions not done in the performance of official duties shall be considered by the sending State for an "ex gratia" payment that is made directly to the injured party; see, for example, NATO SOFA, Article VIII, paragraph 6.

§ 536.107 Scope for international agreements claims arising in the United States.

This section sets forth procedures and responsibilities for the investigation, processing, and settlement of claims arising out of any acts or omissions of members of a foreign military force or civilian component present in the United States or a territory, commonwealth, or possession thereof under the provisions of cost sharing reciprocal international agreements which contain claims settlement provisions applicable to claims arising in the United States. Article VIII of the NATO SOFA has reciprocal provisions applying to all NATO member countries; the Partnership for Peace (PFP) Agreement has similar provisions, as do the Singapore and Australian SOFAs.

§ 536.108 Claims payable under international agreements (for those arising in the United States).

(a) Within the United States, Art. VIII, NATO SOFA applies to claims arising within the North Atlantic Treaty Area, which includes CONUS and its territories and possessions north of the Tropic of Cancer (23.5 degrees north latitude). This excludes Puerto Rico, the Virgin Islands, and parts of Hawaii. Third-party scope claims are payable under subpart D or, if the claim arises incident to noncombat activities, under subpart C of this part. Maritime claims are payable under subpart H of

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this part. The provisions of these subparts on what claims are payable apply equally here. The members of the foreign force or civilian component must be acting in pursuance of the applicable treaty's objectives.

(b) Within the United States, third-party ex gratia claims are payable only by the sending State and are not payable under subpart E of this part.

§536.109 Claims not payable under international agreements (for those arising in the United States).

The following claims are not payable:

(a) Claims arising from a member of a foreign force or civilian component's acts or omissions that do not accord with the objectives of a treaty authorizing their presence in the United States.

(b) Claims arising from the acts or omissions of a member of a foreign force or civilian component who has been excluded from SOFA coverage by agreement between the sending State and the United States.

(c) Third-party scope claims arising within the United States that are not payable under subparts C, D, or H of this part are listed as barred under those subparts. As sending State forces are considered assimilated into the U.S. Armed Services for purposes of the SOFAs, their members are also barred from receiving compensation from the United States when they are injured incident to their service, *Daberkow v. United States*, 581 F.2d 785 (9th Cir. 1978).

§536.110 Notification of incidents arising under international agreements (for claims arising in the United States).

To enable USARCS to properly discharge its claims responsibilities under the applicable SOFAs, it must be notified of all incidents, including off-duty incidents, in which members of a foreign military force or civilian component are involved. Any member or employee of the U.S. armed services who learns of an incident involving a member of a foreign military force or civilian component resulting in personal injury, death, or property damage will immediately notify the judge advocate (JA) or legal officer at the installation or activity to which such person is assigned or attached. The JA or legal of-

ficer receiving such notification will in turn notify the Commander USARCS. If the member is neither assigned nor attached to any installation or activity within the United States, the Commander USARCS, will be notified.

§536.111 Investigation of claims arising under international agreements (for those claims arising in the United States).

Responsibility for investigating an incident rests upon the area claims office (ACO) or claims processing office (CPO) responsible for the geographic area in which the incident occurred. The Commander USARCS, an ACO, and a CPO are authorized to designate the legal office of the installation at which the member of the foreign force or civilian component is attached, including the legal office of another armed force, to carry out the responsibility to investigate. The investigation will comply with the responsible Service's implementing claims regulation. When the member is neither assigned nor attached within the United States, the Commander USARCS will furnish assistance.

§536.112 Settlement authority for claims arising under international agreements (for those claims arising in the United States).

Settlement authority is delegated to the Commander USARCS, except for settlement amounts exceeding the Commander's authority as set forth in subparts C, D, or H of this part, or in those cases where settlement is reserved to a higher authority. Pursuant to the applicable SOFA, the Commander USARCS will report the proposed settlement to the sending State office for concurrence or objection. See, for example, NATO SOFA, Article VIII.

§536.113 Assistance to foreign forces for claims arising under international agreements (as to claims arising in the United States).

As claims arising from activities of members of NATO, Partnership for Peace, Singaporean, or Australian forces in the United States are processed in the same manner as those arising from activities of U.S. government personnel. All JAs and legal offices will